

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER


DO NOT WRITE IN THIS SPACE

Case
16-CA-285794

Date Filed
11-5-2021

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer Symphony Society of San Antonio		b. Tel. No. (210) 554-1014	
		c. Cell No.	
		f. Fax No.	
d. Address (Street, city, state, and ZIP code) 115 Auditorium Circle #B7 San Antonio, TX 78205	e. Employer Representative Corey Cowart Executive Director		g. e-Mail CowartC@sasymphony.org
			h. Number of workers employed 73
i. Type of Establishment (factory, mine, wholesaler, etc.) 501(c)(3) performing arts organization	j. Identify principal product or service symphony orchestra music		
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) SEE ATTACHMENT A.			
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Local 23, American Federation of Musicians			
4a. Address (Street and number, city, state, and ZIP code) 427 North Main Avenue San Antonio, TX 78205		4b. Tel. No. 210-227-3582	
		4c. Cell No.	
		4d. Fax No. 210-475-0877	
		4e. e-Mail info@musiciansofsa.com	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) American Federation of Musicians, AFL-CIO			
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. 210-824-2653	
By  (signature of representative of person making charge)		Office, if any, Cell No. 210-332-7070	
David Van Os, Attorney (Printtype name and title or office, if any)		Fax No. 210-824-3333	
Address 8620 N. New Braunfels Ave. #101, San Antonio, TX 78217		e-Mail dvo@vanoslaw.com	
		11/5/21 (date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHMENT A

During the period of six months before the filing of this charge, the respondent employer violated the Act in at least the following respects:

- Engaging in bad faith surface bargaining in midterm reopener bargaining;
- Entering into and conducting such bargaining with a fixed intention to agree to no terms but its own;
- Setting an artificial and arbitrary limit on the funds available for bargaining with the charging party before the initiation of negotiations, and using such preset limit as a pretext to accomplish its fixed intention to use the reopener bargaining to achieve its predetermined goal of draconian cuts in employee compensation and regression in working conditions;
- Refusing to bargain in good faith over the Union's proposals to remedy the respondent's purported revenue shortfall;
- Declaring impasse, with such impasse resulting from the respondent's unfair labor practices;
- Unilaterally imposing deep cuts and regressions in employee compensation, benefits, and working conditions on the basis of the above described invalid impasse;
- Unilaterally altering the negotiated reason for midterm reopener bargaining, which was to make adjustments for pandemic-related reasons, by using the reopener to achieve steep regression in employee compensation and working conditions for reasons unrelated to the Covid pandemic;
- Provoking a work stoppage caused in whole or in substantial part by the respondent's unfair labor practices; and
- Engaging in the above described conduct in order to discriminate against employees because of their membership in and support for the charging party Union.
- On or about October 28, 2021, the employer advised the Union that it was unilaterally canceling all employee medical benefits contained in the collective bargaining agreement. With regard to the 42 "core" musician positions identified in its "last, best, and final" offer to the Union, the "last, best, and final" offer specifically proposed to continue the accrued contractual medical benefits of the "core" musicians. The employer's announcement of unilateral imposition of changes in the third season of the contract, in response to which unilateral imposition the employees are currently on strike, did not state that medical benefits would be canceled for the "core" positions. The employer had already budgeted through its "last, best, and final" offer for continuation of these benefits for the "core" positions. Cancellation of these benefits for "core" positions was inconsistent with the employer's "last, best, and final" offer. The employer presented no non-discriminatory reason to cancel these accrued benefits. The employer canceled these accrued benefits for "core" positions in order to retaliate and discriminate against employees for exercising their protected rights to engage in a lawful strike in protest of the employer's unfair labor practices. With regard to the 26 positions the employer has reduced to part-time in its unilaterally imposed conditions, the contractual medical benefits the employer unilaterally canceled are accrued benefits as well. The employer canceled these accrued benefits in order to retaliate and discriminate against employees for exercising their protected rights to engage in a lawful strike in protest of the employer's unfair labor practices. These unilateral cancellations of contractually accrued benefits in retaliation for the employees exercising their lawful right to engage in concerted activities including a strike are inherently destructive of employees' rights under the Act.
- All of the above unfair labor practices are inherently destructive of employees' rights under the Act.
- Charging party requests the Board to pursue injunctive relief under Section 10.j of the Act.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 16
819 Taylor St Rm 8A24
Fort Worth, TX 76102-6107

Agency Website: www.nlrb.gov
Telephone: (817)978-2921
Fax: (817)978-2928



Download
NLRB
Mobile App

November 8, 2021

LOCAL 23, AMERICAN FEDERATION OF MUSICIANS
427 N MAIN AVE
SAN ANTONIO, TX 78205-1415

Re: Symphony Society of San Antonio
Case 16-CA-285794

DEAR SIR OR MADAM:

The charge that you filed in this case on November 05, 2021 has been docketed as case number 16-CA-285794. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney BRYAN A. DOOLEY whose telephone number is (682)703-7219. If this Board agent is not available, you may contact Supervisory Field Attorney ROBERTO PEREZ whose telephone number is (210)417-4075.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlrb.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy L. Watson". The signature is fluid and cursive, with a large initial "T" and a stylized "W".

TIMOTHY L. WATSON
REGIONAL DIRECTOR

cc: DAVID VAN OS, ATTORNEY
8620 N NEW BRAUNFELS AVE #101
SAN ANTONIO, TX 78217



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 16
819 Taylor St Rm 8A24
Fort Worth, TX 76102-6107

Agency Website: www.nlr.gov
Telephone: (817)978-2921
Fax: (817)978-2928



Download
NLRB
Mobile App

November 8, 2021

COREY COWART, EXECUTIVE DIRECTOR
SYMPHONY SOCIETY OF SAN ANTONIO
115 AUDITORIUM CIRCLE #B7
SAN ANTONIO, TX 78205

Re: Symphony Society of San Antonio
Case 16-CA-285794

DEAR MR. COWART:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney BRYAN A. DOOLEY whose telephone number is (682)703-7219. If this Board agent is not available, you may contact Supervisory Field Attorney ROBERTO PEREZ whose telephone number is (210)417-4075.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not

enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlr.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

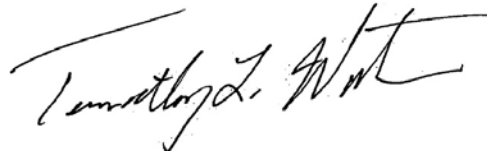
November 8, 2021

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy L. Watson", with a stylized flourish at the end.

TIMOTHY L. WATSON
REGIONAL DIRECTOR

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 16-CA-285794
-----------	-----------------------------

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
--	--

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
------	-------	----------------	-------------

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
--------------------------------	-----------	----------------	------

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

Local 23, American Federation of Musicians

and

Symphony Society of San Antonio

CASE 16-CA-285794

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____

Symphony Society of San Antonio

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: John A. Ferguson, Jr., Schmoyer Reinhard LLP

MAILING ADDRESS: 8000 IH 10 West, Suite 1600, San Antonio, TX 78230

E-MAIL ADDRESS: jferguson2sr-llp.com

OFFICE TELEPHONE NUMBER: 210-447-8033

CELL PHONE NUMBER: 210-860-4860 FAX: 210-447-8036

SIGNATURE: _____

(Please sign in ink.)

DATE: _____

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 16
819 Taylor Street, Room 8A24
Fort Worth, TX 76102-6107

Agency Website: www.nlrb.gov
Telephone: (817) 978-2921
Fax: (817) 978-2928

March 4, 2022

JOHN A FERGUSON JR.
SCHMOYER REINHARD, LLP
8000 IH 10 WEST
SUITE 1600
SAN ANTONIO, TX 78230

DAVID VAN OS, ATTORNEY
DAVID VAN OS & ASSOCIATES, P.C.
8620 NORTH NEW BRAUNFELS AVENUE
SUITE 101
SAN ANTONIO, TX 78217

Re: Symphony Society of San Antonio
Case 16-CA-285794

GENTLEMEN:

The Region has carefully considered the charge alleging that SYMPHONY SOCIETY OF SAN ANTONIO violated the National Labor Relations Act. As explained below, I have decided that further proceedings on the charge should be handled in accordance with the deferral policy of the National Labor Relations Board as set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984). This letter explains that deferral policy, the reasons for my decision to defer further processing of the charge, and the Charging Party's right to appeal my decision.

Deferral Policy: The Board's deferral policy provides that the Board will postpone making a final determination on a charge when a grievance involving the same issue can be processed under the grievance/arbitration provision of the applicable contract. This policy is partially based on the preference that the parties use their contractual grievance procedure to achieve a prompt, fair, and effective settlement of their disputes. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Board's Regional Office will defer the charge.

Decision to Defer: Based on our investigation, I am deferring further proceedings on the charge in this matter to the grievance/arbitration process for the following reasons:

1. The Employer and LOCAL 23, AMERICAN FEDERATION OF MUSICIANS have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.

2. The allegation that, within the six months preceding filing of the charge, the Employer violated the Act by unilaterally altering the negotiated reason for midterm reopener bargaining, which was to make adjustments for pandemic-related reasons, by using the reopener to achieve steep regression in employee compensation and working conditions for reasons unrelated to the COVID pandemic is encompassed by the terms of the collective-bargaining agreement. The other allegations of the charge have been placed in abeyance pending the resolution of this allegation.

3. The Employer is willing to process a grievance concerning the issues in the charge, and will arbitrate the grievance if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the dispute.

4. Since the issues in the charge appear to be covered by provisions of the collective-bargaining agreement, it is likely that the issues may be resolved through the grievance/arbitration procedure.

Further Processing of the Charge: As explained below, while the charge is deferred, the Regional office will monitor the processing of the grievance and, under certain circumstances, will resume processing of the charge.

Charging Party's Obligation: Under the Board's *Collyer* deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly submit the grievance to the grievance/arbitration process or declines to have the grievance arbitrated if it is not resolved, I may dismiss the charge.

Charged Party's Conduct: If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed, or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

Monitoring the Dispute: Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and if continued deferral is appropriate. However, at any time, a party may present evidence and request dismissal of the charge, continued deferral of the charge, or issuance of a complaint.

Notice to Arbitrator Form: If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the arbitrator sends the award to the parties.

Review of Arbitrator's Award or Settlement: If the grievance is arbitrated or settled, the Charging Party may ask the Board to review the arbitrator's award or settlement. The request must be in writing and addressed to me. If the request concerns an arbitrator's award, the request should analyze whether the arbitration process was fair and regular,

whether the unfair labor practice allegations in the charge were considered by the arbitrator, and whether the award is consistent with the Act. Further guidance on this review is provided in *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955) and *Olin Corp.*, 268 NLRB 573 (1984). If the request concerns a grievance settlement, see *Alpha Beta*, 273 NLRB 1546 (1985). These Board decisions are available on our website, www.nlr.gov.

Change in Standards if Parties Agree to Submit Statutory Issue to Arbitrator: If during the processing of the grievance the parties agree to authorize the arbitrator to decide the statutory issue, please advise me in writing.

Charging Party's Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible. Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at www.nlr.gov. See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at www.nlr.gov. If you require additional assistance with E-Filing, please contact e-Filing@nlrb.gov.

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **March 18, 2022**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than March 17, 2022. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before March 18, 2022**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after March 18, 2022, **even if it is postmarked**

or given to the delivery service before the due date. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy L. Watson". The signature is fluid and cursive, with the first name "Timothy" and last name "Watson" clearly distinguishable.

TIMOTHY L. WATSON
REGIONAL DIRECTOR

Enclosures

cc: COREY COWART
EXECUTIVE DIRECTOR
SYMPHONY SOCIETY OF
SAN ANTONIO
115 AUDITORIUM CIRCLE #B7
SAN ANTONIO, TX 78205

LOCAL 23, AMERICAN FEDERATION
OF MUSICIANS
427 N MAIN AVE
SAN ANTONIO, TX 78205-1415

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
NOTICE TO ARBITRATOR

TO: _____
(Arbitrator)

(Address)

NLRB Case Number
16-CA-285794

NLRB Case Name: Symphony Society of San Antonio

A determination has been made by the Regional Director of Region 16 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge.

So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be sent to Regional Director, Region 16, 819 Taylor St Rm 8A24, Fort Worth, TX 76102-6107 at the same time that it is sent to the parties in the arbitration.

(Name)

(Title)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

I am appealing the action of the Regional Director in deferring the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)

E-FILING TO APPEALS

1. **Extension of Time:** This document is used when the Charging Party is asking for more time to efile an Appeal.
 - If an Extension of Time is e-filed, and there are additional documents to be e-filed simultaneously with it, please e-file those documents under the selection **Correspondence**.
 - After an Extension of Time has already been e-filed, any **additional** materials to add to the Extension of Time should be e-filed under **Correspondence**.
2. **File an Appeal:** If the Charging Party does not agree with the Region's decision on the case, an Appeal can be e-filed.
 - Only **one (1) Appeal** can be e-filed to **each** determination in the Region's decision letter that is received.
 - After an Appeal has been e-filed, any **additional** materials to add to the Appeal should be e-filed under **Correspondence**.
3. **Notice of Appearance:** Either party can e-file a Notice of Appearance if there is a new counsel representing one side or a different counsel.
 - This document is only e-filed with the Office of Appeals after a decision has been made by the Region.
 - This document can be e-filed **before** an Appeal is e-filed.
4. **Correspondence:** Parties will **select** Correspondence when adding documents or supplementing the Appeal or Extension of Time.
 - Correspondence is used to e-file documents **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.
5. **Position Statement:** The Charging Party or Charged Party may e-file a Position Statement.
 - The Charging Party will e-file this document as a supplement of the Appeal.
 - The Charged Party will specifically file one to support the Region's decision.
 - This document should be e-filed **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.
6. **Withdrawal Request:** If the Charging Party decides to no longer pursue their appeal, he/she can e-file a Withdrawal Request to the Office of Appeals.
 - This document should be e-Filed **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.



7. The selections of **Evidence** or **Other** should no longer be used.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

March 21, 2022

DAVID VAN OS, ESQ.
DAVID VAN OS & ASSOCIATES, P.C.
8620 N NEW BRAUNFELS AVE STE 101
SAN ANTONIO, TX 78217

Re: Symphony Society of San Antonio
Case 16-CA-285794

Dear Mr. Van Os:

We have received your request for an extension of time to file an appeal. We are granting you an extension to **March 28, 2022**.

File your Appeal Electronically by March 28, 2022. You must file your appeal electronically via the Agency's website www.nlrb.gov and are encouraged to submit a complete statement of the facts and reasons why you believe the Region's decision was incorrect. Remember to allow enough time to complete the electronic filing process by **11:59 pm Eastern Time on March 28, 2022**. Otherwise, your appeal will be late. Instructions on how to file electronically through our e-filing system is on the website.

If Unable to File Electronically, send via Mail by March 27, 2022. If you are unable to file electronically, you must include a written explanation as to why filing electronically was not possible or feasible along with your appeal. These items must be sent through the U.S. mail or by a delivery service **no later than March 27, 2022**, and addressed to the General Counsel, NLRB, Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the appeal should also be sent to the Regional Director. Please note that the date to send your appeal by mail or delivery service is at least one day prior to the appeal due date. This ensures your appeal is timely no matter what date it is received in this office.

Finally, please be advised that we do not accept appeals through fax or e-mail.

Sincerely,

Jennifer A. Abruzzo
General Counsel



By:

Mark E. Arbesfeld, Director
Office of Appeals

cc: TIMOTHY L. WATSON
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
819 TAYLOR ST RM 8A24
FORT WORTH, TX 76102-6107

JOHN A FERGUSON JR.
SCHMOYER REINHARD, LLP
8000 IH 10 W STE 1600
SAN ANTONIO, TX 78230

cl



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

March 25, 2022

DAVID VAN OS, ESQ.
DAVID VAN OS & ASSOCIATES, P.C.
8620 N NEW BRAUNFELS AVE
STE 101
SAN ANTONIO, TX 78217

Re: Symphony Society of San Antonio
Case 16-CA-285794

Dear Mr. Van Os:

We have received your timely appeal from the Region's decision in the above-captioned case. We will assign your appeal for processing in accordance with Agency procedures. Please be assured that our review of this matter will include a full analysis of the underlying investigatory file, your appeal, as well as current Board law and processes.

We will notify you and all involved parties of our decision by letter via email as permitted under Section 102.4(c) of the Board's *Rules and Regulations*. If an email address is not available for you, we will provide the decision by mail.

Sincerely,

Jennifer A. Abruzzo
General Counsel

By: _____

Mark E. Arbesfeld, Director
Office of Appeals

cc: TIMOTHY L. WATSON
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
819 TAYLOR ST RM 8A24
FORT WORTH, TX 76102-6107

COREY COWART
EXECUTIVE DIRECTOR
SYMPHONY SOCIETY OF SAN
ANTONIO
115 AUDITORIUM CIRCLE #B7
SAN ANTONIO, TX 78205

LOCAL 23, AMERICAN FEDERATION
OF MUSICIANS
427 N MAIN AVE
SAN ANTONIO, TX 78205-1415

JOHN A. FERGUSON JR.
SCHMOYER REINHARD, LLP
8000 IH 10 W STE 1600
SAN ANTONIO, TX 78230

kh



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 16
819 Taylor Street, Room 8A24
Fort Worth, TX 76102-6107

Agency Website: www.nlr.gov
Telephone: (817) 978-2921
Fax: (817) 978-2928

August 26, 2022

JOHN A FERGUSON JR.
SCHMOYER REINHARD, LLP
8000 IH 10 WEST
SUITE 1600
SAN ANTONIO, TX 78230

DAVID VAN OS, ATTORNEY
DAVID VAN OS & ASSOCIATES, P.C.
8620 NORTH NEW BRAUNFELS AVENUE
SUITE 101
SAN ANTONIO, TX 78217

Re: Symphony Society of San Antonio
Case 16-CA-285794

GENTLEMEN:

On November 5, 2021, the Charging Party filed the instant charge alleging that within the six months preceding filing of the charge, the Employer violated the Act by unilaterally altering the negotiated reason for midterm reopener bargaining, which was to make adjustments for pandemic-related reasons, by using the reopener to achieve steep regression in employee compensation and working conditions for reasons unrelated to the COVID pandemic.

On March 4, 2022, pursuant to *Collyer Insulated Wire, a Gulf and Western System Co.*, 192 NLRB 837 (1971), and *United Technologies Corporation*, 268 NLRB 557 (1984), the Region deferred processing of the charge to the parties' grievance-arbitration process.

Based on information this office received that the underlying grievance is no longer being processed through the grievance/arbitration process given the Employer's current status, I hereby revoke the Region's earlier decision to defer processing of the instant case to the contractual grievance-arbitration procedure and, I am resuming the processing of the charge.

Very truly yours,

DAVID A. FOLEY
ACTING REGIONAL DIRECTOR

cc: COREY COWART
EXECUTIVE DIRECTOR
SYMPHONY SOCIETY
OF SAN ANTONIO
115 AUDITORIUM CIRCLE #B7
SAN ANTONIO, TX 78205

LOCAL 23, AMERICAN FEDERATION
OF MUSICIANS
427 N MAIN AVE
SAN ANTONIO, TX 78205-1415



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

September 14, 2022

DAVID VAN OS, ESQ.
DAVID VAN OS & ASSOCIATES, P.C.
8620 N NEW BRAUNFELS AVE STE 101
SAN ANTONIO, TX 78217

Re: Symphony Society of San Antonio
Case 16-CA-285794

Dear Mr. Van Os:

In view of the Acting Regional Director's letter of August 26, 2022 revoking the deferral of your charge, your appeal has become moot and the case is hereby closed in this office. The Region will resume the processing of the charge, and all future inquiries should be directed to the Region.

Sincerely,

Jennifer A. Abruzzo
General Counsel

By:

Mark E. Arbesfeld, Director
Office of Appeals

cc: TIMOTHY L. WATSON
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
819 TAYLOR ST RM 8A24
FORT WORTH, TX 76102-6107

COREY COWART, EXECUTIVE
DIRECTOR
SYMPHONY SOCIETY OF SAN
ANTONIO
115 AUDITORIUM CIR #B7
SAN ANTONIO, TX 78205

JOHN A. FERGUSON JR, ESQ.
SCHMOYER REINHARD, LLP
8000 IH 10 W STE 1600
SAN ANTONIO, TX 78230

LOCAL 23, AMERICAN FEDERATION
OF MUSICIANS
427 N MAIN AVE
SAN ANTONIO, TX 78205-1415

vrn